

001239

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE)
N/A 01/08
57
3. DATE:
October 17, 2007

TO: CITY ATTORNEY
2. FROM (ORIGINATING DEPARTMENT):
ENGINEERING & CAPITAL PROJECTS

4. SUBJECT:
EXTENSION OF TWO COOPERATIVE AGREEMENTS WITH CALTRANS FOR STATE ROUTE 56

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)
Larry Van Wey, 533-3005, MS 612
6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)
Brad Jacobsen, 533-3405, MS 612
7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED ☐

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.					None with this action
ORGANIZATION					
OBJECT ACCOUNT					
JOB ORDER					
C.I.P. NUMBER					
AMOUNT					

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>[Signature]</i>	11/9/07	8	DEPUTY CHIEF	<i>[Signature]</i>	12/10/07
2	EAS	<i>[Signature]</i>	11/14/07	9	COO	- Not required -	
3	ECCP- EXEMPT			10	CITY ATTORNEY	<i>[Signature]</i>	12/17/07
4	COUNCIL LIAISON OFFICE	<i>[Signature]</i>	11/14/07	11	ORIG. DEPT	<i>[Signature]</i>	12/17/07
5	FACILITIES FINANCING	<i>[Signature]</i>	11/20/07		DOCKET COORD:	<i>[Signature]</i>	
6	FINANCIAL MANAGEMENT	<i>[Signature]</i>	12/4/07		COUNCIL PRESIDENT	<i>[Signature]</i>	
7	AUDITOR	<i>[Signature]</i>	12/10/07				

☐ SPOB ☒ CONSENT ☐ ADOPTION
COUNCIL DATE: 1/8/08
☐ REFER TO: _____

11. PREPARATION OF: ☐ RESOLUTIONS ☒ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

Authorizing the Mayor to execute amendments to two Cooperative Agreements with Caltrans for SR-56/Camino del Sur Interchange Landscaping and SR-56/Camino Santa Fe Interchange Improvements, extending the termination dates of the Agreements to December 31, 2009.

11A. STAFF RECOMMENDATIONS:

Approve the ordinances

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 1

COMMUNITY AREA(S): Pacific Highlands Ranch, Torrey Highlands

ENVIRONMENTAL IMPACT: This activity is covered under SR-56 between SR-56 West and SR-56 East, LDR #95-0099. These activities are adequately addressed in the environmental documents and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Because the prior environmental documents adequately covered this activity as part of the previously approved projects, this activity is not a separate project for purposes of CEQA review per CEQA Guidelines Section 15060(c)(3).

HOUSING IMPACT: N/A

OTHER ISSUES: 6 votes are required for passage, Subject to Charter Section 99

EXECUTIVE SUMMARY SHEET

DATE ISSUED: October 17, 2007 REPORT NO.: n/a (1472)
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: Engineering and Capital Projects
SUBJECT: Extension of Two Cooperative Agreements with Caltrans for State Route 56
COUNCIL DISTRICT(S): 1
CONTACT/PHONE NUMBER: Brad Jacobsen, 619 533 3045

REQUESTED ACTION:

Council authorization for the Mayor to execute amendments to two Cooperative Agreements with Caltrans for SR-56/Camino del Sur Landscaping and SR-56/Camino Santa Fe Interchange Improvements, extending the termination dates of the Agreements to December 31, 2009.

STAFF RECOMMENDATION:

Staff recommends Council approval of the ordinances.

EXECUTIVE SUMMARY:

On July 26, 2004, the City and Caltrans entered into an Agreement to provide landscaping at the interchange of State Route 56 and Camino del Sur. The termination date for this Agreement is December 31, 2007.

On February 25, 2002, the City and Caltrans entered into an Agreement to provide City-desired improvements at the interchange of State Route 56 and Camino Santa Fe. The original termination date of this Agreement is December 31, 2007.

Caltrans is requesting that the termination dates for these two Agreements be extended so that final accounting and other administrative activities at Caltrans can be completed. The termination date for both Agreements would be extended to December 31, 2009 (a 2-year extension).

Because these extensions will extend the Agreements beyond five years' duration, Council approval via ordinance is required.

FISCAL CONSIDERATIONS:

None with this action

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

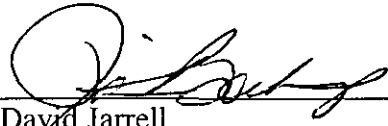
Council approved the SR-56/Camino del Sur Landscaping agreement on July 26, 2004.
Council approved the SR-56/Camino Santa Fe agreement on February 25, 2002.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS:

Caltrans is the key stakeholder in this action.



David Jarrell
Interim Director,
Engineering & Capital Projects



Richard F. Haas
Deputy Chief of Public Works

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN
DIEGO AUTHORIZING AN EXTENSION OF A
COOPERATIVE AGREEMENT WITH CALTRANS FOR
STATE ROUTE 56/CAMINO DEL SUR INTERCHANGE
LANDSCAPING IN THE PACIFIC HIGHLANDS AND
TORREY HIGHLANDS COMMUNITY PLANNING AREAS.

WHEREAS, on July 26, 2004, the City and Caltrans entered into an agreement to provide
landscaping at the interchange of State Route 56 and Camino del Sur [Agreement]; and

WHEREAS, Caltrans is requesting that the termination date for the Agreement be
extended; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:


Section 1. That the Mayor be and he is hereby authorized and empowered to execute, for
and on behalf of said City, an agreement with Caltrans, for State Route 56/Camino Del Sur
interchange landscaping, extending the termination date of the Agreement to December 31, 2009
under the terms and conditions set forth in the Agreement on file in the office of the City Clerk
as Document No. RR _____.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage,
a written or printed copy having been available to the City Council and the public a day prior to
its final passage.

Section 3. This ordinance, having been introduced and adopted by a two-thirds vote of
the members of the San Diego City Council pursuant to Section 99 of the Charter of the City of
San Diego, shall take effect and be in force on the thirtieth day from and after its final passage.

Section 4. That this activity is covered under SR-56 between SR-56 West and SR-56 East, LDR 95-0099. These activities are adequately addressed in the environmental documents and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Because the prior environmental documents adequately covered this activity as part of the previously approved projects, this activity is not a separate project for purposes of CEQA review per CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Peter A. Mesich
Deputy City Attorney

PAM:cfq
12/17/07
Or.Dept:E&CP
O-2008-80

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN
DIEGO AUTHORIZING AN EXTENSION OF A
COOPERATIVE AGREEMENT WITH CALTRANS FOR
STATE ROUTE 56/CAMINO SANTA FE INTERCHANGE
IMPROVEMENTS IN THE PACIFIC HIGHLANDS AND
TORREY HIGHLANDS COMMUNITY PLANNING AREAS.

WHEREAS, on February 25 2002, the City and Caltrans entered into an agreement to
provide City desired improvements at the interchange of State Route 56 and Camino Santa Fe;
and

WHEREAS, Caltrans is requesting that the termination date for the Agreement be
extended; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor be and he is hereby authorized and empowered to execute, for
and on behalf of said City, an agreement with Caltrans, for State Route 56 /Camino Santa Fe
Interchange Improvements, extending the termination date of the Agreement to December 31,
2009 under the terms and conditions set forth in the Agreement on file in the office of the City
Clerk as Document No. RR _____.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage,
a written or printed copy having been available to the City Council and the public a day prior to
its final passage.

Section 3. This ordinance, having been introduced and adopted by a two-thirds vote of
the members of the San Diego City Council pursuant to Section 99 of the Charter of the City of

San Diego, shall take effect and be in force on the thirtieth day from and after its final passage.

Section 4. That this activity is covered under SR-56 between SR-56 West and SR-56 East, LDR 95-0099. These activities are adequately addressed in the environmental documents and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Because the prior environmental documents adequately covered this activity as part of the previously approved projects, this activity is not a separate project for purposes of CEQA review per CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Peter A. Mesich
Peter A. Mesich
Deputy City Attorney

PAM:cfq
12/17/07
Or.Dept:E&CP
O-2008-83

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor



Vetoed: _____
(date)

JERRY SANDERS, Mayor

11-SD-56
PM 4.5
EA 11-172871
Agreement No. 11-0591/A1
Improvements
Time Extension

AMENDMENT NO. 1 TO AGREEMENT

THIS AMENDMENT NO. 1 TO AGREEMENT, ENTERED INTO EFFECTIVE ON _____, 2007, is between the **STATE OF CALIFORNIA**, acting by and through its Department of Transportation, referred to herein as "**STATE**",

and the City of San Diego, a body politic and a municipal corporation of the State of California, referred to herein as "**CITY**".

RECITALS

1. The parties hereto entered into an Agreement (Document No. 015233, District Agreement Number 11-0591) on February 25, 2002, said Agreement stated STATE contemplates the construction of main lanes, bike path, the Camino Santa Fe Bridge Overcrossing structures on State Route 56, referred to as "PROJECT". The said Agreement stated that the CITY desires and requested STATE to install ramps, ramp structures, traffic signals, and drainage/sewer, referred to as IMPROVEMENTS. Said Agreement defines the terms and conditions of which IMPROVEMENTS referred to in the Agreement, are to be designed, financed, constructed, and maintained.
2. It has been determined that IMPROVEMENTS will not be completed prior to the termination date of said Agreement

IT IS THEREFORE MUTUALLY AGREED

1. The termination date specified in Section III, Article 12 of the original Agreement is now December 31, 2009, instead of December 31, 2007.
2. Section III, Article 1 of the original Agreement is replaced in its entirety with the following article:
 - "1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority, and the allocation of funds by the California Transportation Commission (CTC).

3. Section III, Article 10 of the original Agreement is replaced in its entirety with the following article:

"10. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction conferred upon CITY and arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement."

4. Section III, Article 11 of the original Agreement is replaced in its entirety with the following article:

"11. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction conferred upon STATE and arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement."

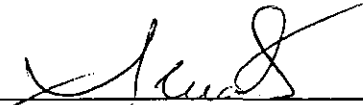
5. All other terms and conditions of said Agreement (Document No. 015233) shall remain in full force and effect.
6. This Amendment No. 1 to Agreement No. 11-0591 is hereby deemed to be a part of Document No. 015233.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

Will Kempton
Director of Transportation

By: _____
Deputy District Director

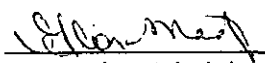
Approved as to Form and Procedure:

By:  _____
Attorney
Department of Transportation

Certified as to Funds:

By: _____
District Budget Manager BK _____

Certified as to Financial Terms and Conditions:

By:  _____
Accounting Administrator
for

CITY OF SAN DIEGO

By: _____
Mayor

By: _____
City Attorney

By: _____
City Clerk

11-SD-56
KP 2.9/10.6
EA 11-172891/3/4
Agreement No. 11-0610/A1
Landscaping
Time Extension

AMENDMENT NO. 1 TO AGREEMENT

THIS AMENDMENT NO. 1 TO AGREEMENT, ENTERED INTO EFFECTIVE ON _____, 2007, is between the **STATE OF CALIFORNIA**, acting by and through its Department of Transportation, referred to herein as "**STATE**",

and the City of San Diego, a body politic and a municipal corporation of the State of California, referred to herein as "**CITY**".

RECITALS

1. The parties hereto entered into an Agreement (Document No. 015881, District Agreement Number 11-0610) on July 26, 2004, said Agreement stated STATE is constructing improvements on State Route 56, referred to herein as "PROJECT". The said Agreement stated that the CITY desires landscaping, referred to as IMPROVEMENTS. Said Agreement defines the terms and conditions of which IMPROVEMENTS referred to in the Agreement, is to be designed, financed, constructed and, maintained.
2. It has been determined that IMPROVEMENTS will not be completed prior to the termination date of said Agreement

IT IS THEREFORE MUTUALLY AGREED

1. The termination date specified in Section III, Article 10 of the original Agreement is now December 31, 2009, instead of December 31, 2007.
2. Section III, Article 1 of the original Agreement is replaced in its entirety with the following article:

"1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority, and the allocation of funds by the California Transportation Commission (CTC).

3. Section III, Article 5 of the original Agreement is replaced in its entirety with the following article:

“5. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction conferred upon CITY and arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.”

4. Section III, Article 6 of the original Agreement is replaced in its entirety with the following article:

“6. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction conferred upon STATE and arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.”

5. All other terms and conditions of said Agreement (Document No. 015881) shall remain in full force and effect.
6. This Amendment No. 1 to Agreement No. 11-0610 is hereby deemed to be a part of Document No. 015881.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

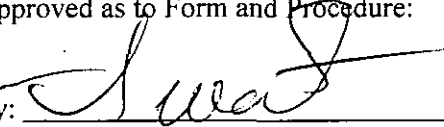
CITY OF SAN DIEGO

Will Kempton
Director of Transportation

By: _____
Deputy District Director

By: _____
Mayor

Approved as to Form and Procedure:

By:  _____
Attorney
Department of Transportation

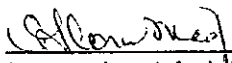
By: _____
City Attorney

Certified as to Funds:

By: _____
District Budget Manager BK _____

By: _____
City Clerk

Certified as to Financial Terms and Conditions:

for By:  _____
Accounting Administrator

ORIGINAL

11-SD-56
KP 2.9-10.6
EA 172891/3/4
Agreement No. 11-0610
State Route 56
Camino Del Sur I/C
Landscaping

COOPERATIVE AGREEMENT

This AGREEMENT entered into effective on JUL 26 2004 is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE", and

CITY OF SAN DIEGO, a municipal corporation of the State of California, referred to herein as "CITY"

RECITALS

1. STATE and CITY, pursuant to Streets and Highways Code Section 130, are authorized to enter into a Cooperative Agreement for improvements to State Highways within the City of San Diego.
2. STATE is constructing highway improvements consisting of landscaping on State Route 56 (SR-56) from Carmel Country Road to Carmel Mountain Road, herein referred to as PROJECT. CITY desires STATE to include as part of PROJECT the design and construction of landscaping on the west side of the SR-56/Camino del Sur interchange, and the construction of landscaping on the east side of the SR-56/Camino del Sur interchange between the ramps and main lanes, both of which are referred to herein as IMPROVEMENTS, and CITY is willing to pay all costs to develop and construct IMPROVEMENTS as a part of PROJECT.
3. Project Report (PR) and Environmental Document (ED) responsibilities for IMPROVEMENTS were covered in a prior Cooperative Agreement executed by STATE and CITY on June 24, 1996 (District Agreement No. 11-0500, Document No. 013562). This Agreement takes precedence over any conflicting terms in previous agreements relating to construction of IMPROVEMENTS.
4. STATE and CITY entered into District Agreement 11-8206 (Document 014512) on July 19, 1999, with said Agreement defining the terms and conditions for all right-of-way activities for PROJECT and IMPROVEMENTS.

DOCUMENT NO.

299479

FILED

JUL 26 2004

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

015881

5. STATE and CITY entered into District Agreement 11-0600 (Document 015460) on December 9, 2002, with said Agreement defining the terms and conditions for the design of the road improvements (excluding landscape) for the west side of the SR-56/Camino del Sur interchange. Construction of the road improvements (excluding landscape) for the west side of the SR-56/Camino del Sur interchange will be addressed in District Agreement 11-0605 which is to be executed prior to the execution of this Agreement.
6. The parties hereto desire to define herein the terms and conditions under which said IMPROVEMENTS will be designed, financed, constructed and maintained.

SECTION I

STATE AGREES:

1. To provide all design engineering, including plans, specifications and estimate (PS&E) and all contract documents for advertising and awarding construction contract for PROJECT and include IMPROVEMENTS as part of PROJECT.
2. If STATE uses consultants to perform any design services, STATE shall provide oversight at STATE expense.
3. To account for all PS&E and construction costs to be paid for by CITY pursuant to this agreement.
4. To construct IMPROVEMENTS as a part of PROJECT.
5. To submit a billing to CITY, which billing will be forwarded within thirty (30) days of the execution of this Agreement, for the amount of \$70,000 which figure represent the estimated cost of preparation of the PS&E and contract documents for the advertising and awarding of the construction contract for IMPROVEMENTS as a part of PROJECT.
6. To submit billing to CITY, which billing will be forwarded fifteen (15) days prior to the bid advertising date for a construction contract for PROJECT, the amount of \$800,000. Said figure represents CITY's estimated cost for construction (\$700,000) and construction engineering (\$100,000) of IMPROVEMENTS.
7. Upon completion of PROJECT and all work incidental thereto, to furnish CITY with a detailed statement of the costs to be borne by CITY. STATE thereafter shall refund to CITY, promptly after completion of STATE's final accounting of IMPROVEMENTS costs, any amount of CITY's deposits paid in accordance with Section II, Articles 5 and 6 remaining after actual costs to be borne by CITY have been deducted. If actual costs exceed CITY's deposits, STATE will bill CITY for any additional amount required to complete CITY's financial obligations pursuant to this Agreement.

8. State Contact: Mr. Gustavo Dallarda
Project Manager
Caltrans
2829 Juan Street
San Diego, CA 92110
(619) 688-6738

SECTION II

CITY AGREES:

1. To fund one hundred percent (100%) of all design engineering costs for IMPROVEMENTS including, but not limited to, costs for preparation of detailed PS&E and preparation of contract documents for advertising and awarding construction contract. Estimate of said design engineering cost is \$70,000.
2. To fund one hundred percent (100%) of construction capital and construction engineering costs of IMPROVEMENTS, including any claims and right of way delays that may result from construction of IMPROVEMENTS. Estimate of said construction capital cost is \$700,000 and construction engineering cost is estimated to be \$100,000. The total cost of IMPROVEMENTS and IMPROVEMENTS related services is estimated to be \$870,000. Said costs shall also include costs of providing personnel resources and their equipment and all direct and indirect costs (functional and administrative overhead assessments) attributable to construction applied in accordance with STATE's standard accounting procedures. The actual cost of IMPROVEMENTS shall be determined after completion of all work and upon final accounting of costs.
3. To obtain and certify, at CITY's expense, legal and physical control of right of way and easements ready for construction of IMPROVEMENTS.
4. CITY agrees that the execution to this Agreement by CITY grants to STATE the right to enter upon CITY owned or legally controlled lands to construct IMPROVEMENTS.
5. To deposit with STATE within twenty-five (25) days of receipt of billing therefor, which billing will be forwarded immediately following execution of this agreement, the amount of \$70,000. Said figure represents the estimated cost of preparation of the PS&E and contract documents for advertising and awarding construction contract for IMPROVEMENTS by STATE on CITY's behalf.
6. To deposit with STATE within twenty-five (25) days of receipt of billing therefor, which billing will be forwarded fifteen (15) days prior to the STATE's bid advertising date of a construction contract for PROJECT, the amount of \$800,000. Said figure represents the estimated cost for construction (\$700,000) and construction engineering (\$100,000) of IMPROVEMENTS by STATE on CITY's behalf.

7. STATE's construction contract claims process will be followed, with STATE acting as the lead agency in consultation with CITY. CITY shall abide by the outcome of said claims process. In the event that arbitration under the provisions of Public Contract Code Section 10240 et seq. results from the contract claims process, STATE will act as lead agency in Arbitration unless otherwise agreed by STATE and CITY.
8. CITY's contact person is:

Frank Belock, Jr., Director
Engineering and Capital Project
City of San Diego
202 C Street, MS 9B
San Diego, CA 92101
(619) 236-6274

SECTION III

IT IS MUTUALLY AGREED:

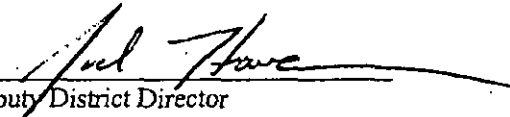
1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Authority, and the allocation of resources by the California Transportation Commission.
2. If any existing public and/or private utility facilities conflict with the construction of IMPROVEMENTS or violate STATE's encroachment policy, STATE will make all necessary arrangements with the owner of the facilities for their protection, relocation or removal. STATE shall inspect the protection, relocation or removal. If there are costs of such protection, relocation or removal which STATE and/or CITY must legally pay, STATE will bill CITY upon receipt of bill from utility companies and CITY shall bear its share of the cost of said protection, relocation or removal, plus the cost of engineering overhead and inspection. If any protection relocation or removal of utility facilities is required, such work shall be performed in accordance with STATE policy and procedure for those facilities located within the limits of work providing for the improvement to the state highway and in accordance with CITY policy for those facilities located outside of the limits of work providing for the improvement to the state highway.
3. After opening of bids for construction of IMPROVEMENTS, CITY's estimate of cost will be revised based on actual bid prices. CITY's required deposit under Section II Article 6 above will be increased or decreased to matched revised estimate. If the estimated deposit increase or decrease is less than \$1,000 no refund or demand for additional deposit will be made.

4. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of State highways and public facilities different from the standard of care imposed by law.
5. Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless the State of California and all its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.
6. Neither CITY nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, STATE shall fully defend, indemnify and save harmless CITY, all officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement.
7. Prior to completion of PS&E for IMPROVEMENTS, CITY may terminate this Agreement in writing. CITY shall reimburse STATE for all IMPROVEMENTS related costs incurred by STATE up to the termination date, in addition to any costs incurred by reason of the termination. All engineering documents, including raw data and draft plans, specifications, and estimates, prepared up to the time of termination shall become property of STATE. A copy of engineering documents will be provided to the CITY upon request. Use of these documents by the CITY would be subject to applicable Government codes, State Statutes, and other State and Federal laws.
8. Upon completion and acceptance of PROJECT and IMPROVEMENTS by STATE, STATE will accept control of and will maintain at its own cost and expense IMPROVEMENTS.
9. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

10. Except as otherwise provided in Section III, Article 7 above, this Agreement shall terminate upon completion and acceptance of the construction contract for PROJECT or on December 31, 2007, whichever is earlier in time; however, the ownership, operation, maintenance, indemnification, and claims clauses shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any claim related to the construction contract arise out of PROJECT be asserted against STATE, CITY agrees to extend the termination date of this Agreement and provide additional funding as required to cover CITY's proportionate share of costs or execute a subsequent agreement to cover those eventualities.

STATE OF CALIFORNIA
Department of Transportation

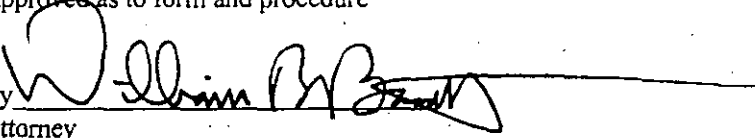
Jeff Morales
Director of Transportation

By 
Deputy District Director

Certified as to funds

By 
District Budget Manager BK ~~XX~~

Approved as to form and procedure

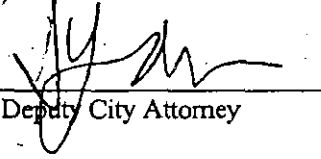
By 
Attorney
Department of Transportation

Certified as to procedure

By 
Accounting Administrator

CITY OF SAN DIEGO

By 
City Manager

By 
Deputy City Attorney

RESOLUTION NUMBER R- 299479ADOPTED ON JUL 26 2004

WHEREAS, in December 2002 the City of San Diego [City] and California Department of Transportation [Caltrans] entered into a Cooperative Agreement to authorize Caltrans to design the westbound on-ramp and eastbound off-ramp from State Route 56 [SR-56] to Camino Del Sur [Project], and was approved by the City Council on December 9, 2002, a copy of which is on file with the City Clerk as Document No. RR-297455; and

WHEREAS, in December 2003 the City and Caltrans entered into a Cooperative Agreement to construct these facilities, and was approved by the City Council on December 8, 2003, a copy of which is on file with the City Clerk as Document No. RR-298693; and

WHEREAS, the City desires to include the design and construction of landscaping to the above Project; NOW, THEREFORE,


BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is hereby authorized to execute, for and behalf of the City, a Cooperative Agreement with the State of California, through its Department of Transportation, for the design and construction of landscaping at the SR-56 and the Camino Del Sur Interchange, under the terms and conditions set forth in the Cooperative Agreement on file in the office of the City Clerk as Document No. RR- 299479, together with any reasonably necessary modifications of amendments thereto which do not increase project scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of this Project and Agreement.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is hereby authorized to increase CIP No. 52-463.0 in the FY 2005 Capital Improvements Program Budget the appropriation of \$870,000 from Fund 79015.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is hereby authorized to appropriate and expend an amount not to exceed \$870,000 from Fund No. 79015 for the design and construction of CIP 52-463.0.

APPROVED: CASEY GWINN, City Attorney

By


Keri Katz
Head Deputy City Attorney

KK:km
7/06/04
Aud.Cert.:2401216
Or.Dept:E&CP
R-2005-59

Passed and adopted by the Council of San Diego on July 26, 2004 by the following vote:

YEAS: PETERS, ZUCCHET, LEWIS, MAIENSCHIN, FRYE,
MADAFFER, INZUNZA, MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT: ATKINS.

AUTHENTICATED BY:

DICK MURPHY
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

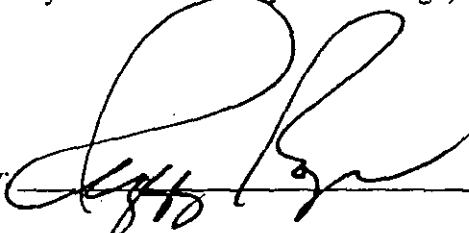
(SEAL)

By: Peggy Rogers, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R- 299479, passed and adopted by the Council of The City of San Diego,
California on July 26, 2004.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy